



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 26, 1996

Mr. Tom Treadway
Executive Director
General Services Commission
P.O. Box 13047
Austin, Texas 78711-3047

Letter Opinion No. 96-079

Re: Validity under Texas Constitution,
article III, section 35 of rider found at
article IX, section 49, 1995 General
Appropriations Act (ID# 38966)

Dear Mr. Treadway:

You ask whether the rider¹ found at article IX, section 49 of the current General Appropriations Act² complies with article III, section 35 of the Texas Constitution, which provides in part:

*No bill, (except general appropriation bills, which may embrace the various subjects and accounts, for and on account of which moneys are appropriated) shall contain more than one subject.*³
[Emphasis added.]

Section 35 of article III limits appropriations bills to a single subject, the appropriation of funds from the State Treasury.⁴ The exception italicized above permits a general appropriations act to include multiple "items of appropriation," each one setting aside or dedicating a sum of money for a stated purpose.⁵ Because general appropriations

¹The term "rider" is used to describe a provision of text included in a general appropriations act. See generally *Jessen Associates, Inc. v. Bullock*, 531 S.W.2d 593, 596 (Tex. 1975); Attorney General Opinion M-1199 (1972). Article IX of the current General Appropriations Act consists entirely of riders. General Appropriations Act, 74th Leg., R.S., ch. 1063, art. IX, 1995 Tex. Sess. Law Serv. 5242, 6030 ("General Provisions"). Riders are also found in other articles of the General Appropriations Act. See *id.* art. III, 1995 Tex. Sess. Law Serv. at 5687-5702 ("Special Provisions Relating Only to State Agencies of Higher Education"). Describing a provision as a "rider" does not indicate that it is valid or invalid, but only that it must be analyzed for validity according to article III, section 35 of the Texas Constitution.

²*Id.* art. IX, § 49, 1995 Tex. Sess. Law Serv. at 6095.

³Tex. Const. art. III, § 35(a).

⁴*Jessen*, 531 S.W.2d at 600; *Moore v. Sheppard*, 192 S.W.2d 559, 561 (Tex. 1946); *Linden v. Finley*, 49 S.W. 578 (Tex. 1899); Attorney General Opinions H-321 (1974) at 2, V-1254 (1951) at 7.

⁵*Jessen*, 531 S.W.2d at 599; see generally Tex. Const. art. IV, § 14 (if bill contains several items of appropriation, governor may veto one or more of such items and approve the rest of the bill).

acts are limited to the single subject of appropriating funds, a general law may not be enacted, amended, or repealed in such acts.⁶ A rider to the general appropriations act may not impose affirmative requirements on state officers or entities.⁷ However, a rider that is merely declarative of existing law is not invalid.⁸

A general appropriations bill may constitutionally include language that qualifies or directs the use of funds appropriated by the bill or that is merely incidental to an appropriation.⁹ Such provisions, or "riders", may do no more than "detail, limit, or restrict the use of the funds or otherwise insure that the money is spent for the required activity for which it is therein appropriated."¹⁰

The rider you inquire about reads as follows:

Sec. 49. Unfair Business Practices. Funds appropriated by this Act shall not be used to purchase supplies, equipment or services from companies which have been found, in a judicial or state agency administrative proceeding, to be guilty of unfair business practices.¹¹ This restriction shall also apply to any company which has as an officer an individual who served as an officer in another company which has been found, in a judicial or state agency administrative proceeding, to be guilty of unfair business practices. This restriction on expenditures shall be in effect for a period of one year from the determination of guilt. [Footnote added.]

General Appropriations Act, 74th Leg., R.S., ch. 1063, art IX, § 49, 1995 Tex. Sess Law Serv. 5242, 6095.

This rider purports to restrict the use of any appropriated funds that might be used to purchase supplies, equipment, or services. Riders that place specific and narrow restrictions on the use of appropriated funds have been upheld. For example, this office has found valid a rider providing that "no motor-propelled passenger vehicle may be

⁶*Moore*, 192 S.W.2d at 561; *Linden*, 49 S.W. at 579; Attorney General Opinion V-1254 at 7; *see also* Attorney General Opinions DM-93 (1992), DM-81 (1992), JM-1151 (1990).

⁷*See generally* Attorney General Opinions DM-81 (1992), MW-51 (1979) at 4.

⁸Attorney General Opinion JM-353 (1985) at 3 (*modified in part by* Attorney General Opinion DM-81 (1992) at 2).

⁹*Jessen*, 531 S.W.2d at 599.

¹⁰Attorney General Opinion V-1254 (1951) at 17 (summary).

¹¹We do not attempt to determine precisely what business practices the term "unfair business practices" is meant to include.

purchased" with appropriated funds, stating that it was "a mere limitation and restriction upon the use of the money appropriated" by the general appropriations act.¹²

Section 49 is phrased as a restriction on the use of appropriated funds, but this phrasing does not necessarily make it a valid rider. A general law may be formulated as a rider stating that "[n]one of the funds appropriated to" an entity may be expended unless some condition is fulfilled.¹³ More important than the formulation of the rider is the breadth or narrowness of its effect, and whether or not it conflicts with general law.¹⁴ In *Coates v. Windham*, 613 S.W.2d 572 (Tex. Civ. App.--Austin 1981, no writ), the court addressed the validity of a rider to the appropriation to the Department of Corrections:

The Department of Corrections is authorized to acquire from the proceeds of the sale of properties, and/or the exchange of properties, and/or from the appropriation for prison construction, acreage for a prison site upon which to construct a prison unit. The acreage for a prison site shall be acquired only when authorized by the Approval Board consisting of the Governor, the Commissioner of the General Land Office, and the Chairman of the Board of Corrections.¹⁵

An item of appropriation allocated over \$20,000,000 for a new prison unit.¹⁶

The court stated that the rider was an attempt by the legislature to regulate the expenditure of the appropriated sum "in a limited and negative way" and it "did not, therefore, constitute an excessive degree of delegation so as to run afoul of the prohibition against two subjects being embraced by one bill."¹⁷ Although the Texas Board of Corrections had "exclusive management and control" of matters pertaining to the management and operation of the Department of Corrections, the legislature had never granted the board an "exclusive and plenary power" in matters pertaining to real property.¹⁸ Thus, the rider did not impermissibly attempt to amend or replace an existing

¹²Attorney General Opinion V-1253 (1951) at 4; *see also* Attorney General Opinion MW-498 (1982) (finding valid rider limiting to \$10,000 plaintiff's attorney's fees in suit against Texas Department of Corrections).

¹³*See* Attorney General Opinions DM-81 (1992), M-1199 (1972) (holding invalid various riders phrased as restrictions on use of appropriated funds).

¹⁴*See Strake v. Court of Appeals*, 704 S.W.2d 746, 748-49 (Tex. 1986).

¹⁵General Appropriations Act, 66th Leg., R.S., ch. 843, art. III, 1979 Tex. Gen. Laws 2445, 2625.

¹⁶*Id.*, 1979 Tex. Gen. Laws at 2620.

¹⁷*Coates v. Windham*, 613 S.W.2d 572, 575 (Tex. Civ. App.--Austin 1981, no writ).

¹⁸*Id.* at 575.

general law. "Had the rider in question conferred any affirmative powers or duties on the Board, or had the Legislature previously conferred upon the Texas Board of Corrections the exclusive power of acquiring prison lands by purchase, we believe that we would be faced with an entirely different question."¹⁹

After examining the provisions governing the greater part of state purchasing, we believe that the rider at issue does raise an entirely different question than that addressed in *Coates*. The General Services Commission ("commission") is mandated to "acquire by purchase, lease, rental, or another manner all goods and services for a state agency" and to "operate an effective and economical system for purchasing goods and services."²⁰ It may delegate purchasing authority to state agencies, subject to various restrictions.²¹ Chapters 2155 through 2157 of the Government Code set out detailed procedures and requirements applicable to state purchasing.²² For example, subchapter H of chapter 2155 establishes purchasing preferences for energy efficient products, products produced in Texas or in the United States, if Texas products are not equal in cost and quality, and recycled products. However, the rider in question would prevail over the statutorily established preferences in certain circumstances. The rider amends statutory law and therefore may not be constitutionally included in a general appropriations act.

Moreover, to comply with the rider, the commission and other state agencies with purchasing authority would have to determine whether a prospective supplier had been found to be guilty of unfair business practices or had as an officer an individual who had served as an officer of another company found to be guilty of unfair business practices. To the extent the rider attempts to confer affirmative duties on agencies that purchase supplies, equipment or services with appropriated funds, it is an unconstitutional attempt to adopt general law in the general appropriations act.

Finally, chapter 2155 of the Government Code imposes restrictions upon the commission's purchasing power analogous to the restriction articulated in article IX, section 49, of the current general appropriations act. Chapter 2155 forbids a state agency from awarding a contract that includes proposed financial participation by a person compensated by the agency to prepare the specifications or request for proposals on which

¹⁹*Id.* at 575-76.

²⁰Gov't Code § 2155.061.

²¹*Id.* § 2155.132.

²²Since you have not asked us to address a specific purchasing statute, we compare the rider in question to chapters 2155 through 2158 of the Government Code, the provisions applicable to most of the purchases funded by the general appropriations act. However, some purchases funded by appropriated funds may be subject to other provisions of law. *See, e.g.*, Educ. Code § 44.031; *see* Attorney General Opinion JM-978 (1988) (provisions applicable to contract for Medicaid purchased health services).

the contract is based.²³ Moreover, a bidder offering to sell goods or services to the state is required to certify on each bid submitted that neither the bidder, nor the person represented by the bidder, nor any person acting for the represented person has violated antitrust laws.²⁴ Thus, the legislature has indicated that such restrictions upon the expenditure of public funds to purchase goods and services are properly a matter of general law.

S U M M A R Y

The rider found at article IX, section 49 of the 1995 General Appropriations Act attempts to adopt and amend general law in violation of article III, section 35 of the Texas Constitution and is therefore invalid except to the extent consistent with state law.

Yours very truly,



Susan L. Garrison
Assistant Attorney General
Opinion Committee

²³Gov't Code § 2155.004.

²⁴*Id.* § 2155.005. We do not address the scope and effect of section 21.005 of the Government Code. To the extent that the rider is merely declarative of existing law, it is not invalid. See Attorney General Opinion JM-353 (1985) at 3.